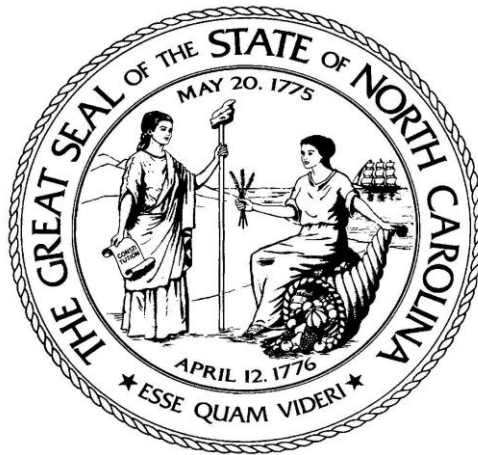


NORTH CAROLINA GENERAL ASSEMBLY



ENVIRONMENTAL REVIEW COMMISSION

REPORT TO THE
2013 SESSION
of the
2013 GENERAL ASSEMBLY

XXXXXX, 2013

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TRANSMITTAL LETTER

xxxxxxx 2013

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TO THE MEMBERS OF THE 2013 REGULAR SESSION
OF THE 2013 GENERAL ASSEMBLY

Pursuant to Article 12D of Chapter 120 of the General Statutes, the Environmental Review Commission submits its report and recommendations to the 2013 Regular Session of the 2013 General Assembly.

Respectfully submitted,

Senator David Rouzer

Representative Mitchell Gillespie

Representative Ruth Samuelson

Co-Chairs
Environmental Review Commission

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STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES ARTICLE 12D.

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established.

§ 120-70.42. Membership; cochaIRS; vacancies; quorum.

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources or the equivalent committee, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of nine members.

§ 120-70.43. Powers and duties.

(a) The Environmental Review Commission shall have the following powers and duties:

- (1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:

- a. Benefits of each program relative to costs;
 - b. Achievement of program goals;
 - c. Use of measures by which the success or failure of a program can be measured; and
 - d. Conformity with legislative intent;
- (2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:
- a. Improvements in administrative structure, practices, and procedures;
 - b. Increased integration and coordination of programs and functions;
 - c. Increased efficiency in budgeting and use of resources;
 - d. Efficient administration of licensing, permitting, and grant programs;
 - e. Prompt, effective response to environmental emergencies;
 - f. Opportunities for effective citizen participation; and
 - g. Broadening of career opportunities for professional staff;
- (3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
- a. Ways in which agencies may operate more efficiently and economically;
 - b. Ways in which agencies can provide better services to the State and to the people; and
 - c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;
- (4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;
- (5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;
- (6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and

recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.

(b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:

- (1) Monitoring the implementation of Session Laws 1989, c. 727;
- (2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;
- (3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and
- (4) Recodification of the General Statutes relating to the environment and environmental agencies.

(c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

- (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
- (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
- (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
- (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
- (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
- (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
- (8),(9) Repealed by Session Laws 2001-474, s. 12.
- (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended,

and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;

- (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
- (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

§ 120-70.44. Additional powers.

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission.

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission.

COMMISSION MEMBERSHIP

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ENVIRONMENTAL REVIEW COMMISSION

2012-2013 Membership

Pursuant to G.S. 120-70.42, the Environmental Review Commission consists of six members appointed by the President Pro Tempore of the Senate, six members appointed by the Speaker of the House of Representatives, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources.

President Pro Tempore of the Senate

Appointments: (expiring on January 30, 2013)

Senator David Rouzer, Co-Chair

523 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
In Raleigh: (919) 733-5748
Email: David.Rouzer@ncleg.net

Senator Stan W. Bingham

2117 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-2808
Phone: (336) 859-0999; Fax: (336) 859-2261
In Raleigh: (919) 733-5665
Email: Stan.Bingham@ncleg.net

Senator Daniel G. Clodfelter

526 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (704) 331-1041; Fax: (704) 378-2041
In Raleigh: (919) 715-8331; Fax (919) 733-3113
Email: Daniel.Clodfelter@ncleg.net

Senator Don East (deceased)

521 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (336) 368-4082
In Raleigh: (919) 733-5743
Email: Don.East@ncleg.net

Speaker of the House of Representatives

Appointments: (expiring on January 15, 2013)

Representative Mitch Gillespie, Co-Chair

307B2 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (828) 652-5548
In Raleigh: (919) 733-5862
Email: Mitch.Gillespie@ncleg.net

Representative Ruth Samuelson, Co-Chair

419B Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (704) 366-8748; Fax (866) 884-2996
In Raleigh: (919) 715-3009
Email: Ruth.Samuelson@ncleg.net

Representative William D. Brisson

1325 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-1096
Phone: (910) 862-7007
In Raleigh: 919-733-5772
Email: William.Brisson@ncleg.net

Representative Joe Hackney

612 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: 919-929-0323
In Raleigh: (919)-733-0057
Email: Joe.Hackney@ncleg.net

Senator Fletcher L. Hartsell
300-C Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (704) 786-5161
In Raleigh: (919) 733-7223
Email: fletcher.hartsell@ncleg.net

Senator Brent Jackson
525 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (910) 567-2202
In Raleigh: (919) 733-5705
Email: Brent.Jackson@ncleg.net

Senator Bill Rabon
2108 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-2808
In Raleigh: (919) 733-5963
Email: bill.rabon@ncleg.net

Senator Michael P. Walters
1118 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-2808
Phone: (910) 628-7075
In Raleigh: (919) 733-5651
Email: Michael.Walters@ncleg.net

Commission Staff:

Jeff W. Hudson, Commission Counsel, Jeffreyh@ncleg.net
Jennifer L. McGinnis, Commission Counsel, Jenniferm@ncleg.net
Jeff Cherry, Commission Counsel, jeff.cherry@ncleg.net
Jennifer R. F. Mundt, Commission Analyst, Jennifermu@ncleg.net
Mariah B. Matheson, Commission Assistant, Mariahm@ncleg.net
Commission Clerks:

- Cindy Hobbs, gillespiela@ncleg.net
- Sarah Neunzig, Rouzerra@ncleg.net
- Susan Phillips, samuelsonla@ncleg.net

Commission Contact Information:

545 Legislative Office Building
300 North Salisbury Street
Raleigh, North Carolina 27603
(919) 733-2578
FAX: (919) 715-5460

Representative Carolyn H. Justice
420 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (910) 270-9975
In Raleigh: (919) 715-9664
Email: Carolyn.Justice@ncleg.net

Representative Pat McElraft
637 Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (252) 342-0693
In Raleigh: (919) 733-6275
Email: pat.mcelraft@ncleg.net

Representative Chuck McGrady
418A Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925
Phone: (828) 692-3696
In Raleigh: (919) 733-5956
Email: chuck.mcgrady@ncleg.net

Representative Roger West
1004 Legislative Building
16 W. Jones Street
Raleigh, NC 27601-1096
Phone: (828) 837-5246
In Raleigh: (919) 733-5859
Email: Roger.West@ncleg.net

COMMISSION PROCEEDINGS

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The Environmental Review Commission met three times during the interim between the 2012 and the 2013 Regular Sessions of the General Assembly. The Commission's Charge can be found [here](#). The following is a brief summary of the Commission's proceedings. Detailed minutes and information from each Commission meeting are available in the Legislative Library and [online](#).

October 11, 2012

AGENDA

9:30 a.m. Thursday

Room 544 Legislative Office Building
Raleigh, North Carolina

1. Call to order
Representative Ruth Samuelson, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)
Senator David Rouzer
Representative Mitch Gillespie
Representative Ruth Samuelson
3. Report from the Commission Counsel (*5 minutes*)
Jeff Hudson, Commission Counsel
4. Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress for the period from January 2012 through September 2012 (G.S. 143B-282(b)) (*30 minutes*)
Stephen T. Smith, Chairman
Environmental Management Commission
5. Annual State Water Supply Plan Report (G.S. 143-355(n)) (*45 minutes*)
Thomas A. Reeder, Director
Division of Water Resources, Department of Environment and Natural Resources (DENR)
6. Report on the 2011 Agriculture Water Use Survey (G.S. 106-24(b)) (*30 minutes*)
Vernon Cox, Environmental Programs Specialist
Department of Agriculture and Consumer Services

7. Presentation on the State Erosion and Sedimentation Control Program (30 minutes)

Robin Smith, Assistant Secretary for Environment, DENR

Tracy Davis, Director

Division of Energy, Mineral, and Land Resources, DENR

8. Plastics Recycling (1 hour)

Scott B. Mouw, Chief

Community and Business Assistance Section

Division of Environmental Assistance and Outreach, DENR

Scott Booth

Chief Operating Officer

Envision Plastics

Chris Bradley

Vice President of Operations

Clear Path Recycling, LLC

Terry Turner

Product Development Manager

Unifi, Inc.

Charles J. Lancelot, Ph.D.

Executive Director, Plastics Environmental Council

9. Commission discussion and announcements

10. Adjourn

The first meeting of the Environmental Review Commission (ERC or Commission) was held on Thursday October 11, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Samuelson presided.

Mr. Jeff Hudson, Commission Counsel, gave an overview of the meeting agenda and the reports received by the Commission.

Mr. Stephen Smith, Chairman of the Environmental Management Commission (EMC), provided the Commission with quarterly reports on the operations, activities, programs, and progress for the EMC from January 2012 through September 2012.

The Commission discussed various issues relating to the buffer rules, including making the buffer rules more efficient and elective cutting by a forester. Commission members asked about the 303(d) list process. Mr. Smith explained that the 303(d) list process refers to a section of the federal Clean Water Act, which gives the State the

authority to determine which waters should be designated as impaired. The Clean Water Act requires that a list of impaired waters be prepared and sent to the United States Environmental Protection Agency (USEPA) for either approval or disapproval. Each state develops a strategy and process to deal with those impaired waters.

There was Commission discussion on ecological flow, the methodology that the Department of Environment and Natural Resources (DENR) uses to create a list of impaired waters, and whether or not the EMC should be involved in developing that method. The Commission requested more information on ecological flow at the November meeting.

Mr. Thomas A. Reeder, Director, Division of Water Resources (DWR), DENR, provided an annual report on the State Water Supply Plan and other information related to water resources in the State, including water efficiency, hydrologic modeling, ecological flows, assistance to local governments, storage alternatives, coastal plain aquifers, shale gas and water quantity, drought response preparation, pending interbasin transfers (IBT), and protecting drinking water sources.

Mr. Reeder noted that there are several dozen water systems in the State that cannot account for 31% to 50% of their water. According to Mr. Reeder, this water loss is partially due to geography. The mountain region of the State may be subject to more water loss, as the water must be pumped at increased pressures through mountainous terrain. In addition to geography, Mr. Reeder said that improper metering, antiquated systems, and lack of staff could contribute to pervasive water loss.

Mr. Reeder noted that there are several water systems that will require an IBT by 2050. Mr. Reeder said that he would provide the Commission with the specific water systems at the ERC meeting in November.

There was additional Commission discussion on aquifer incursion, desalination, leakages, water efficiency, pressure in the aquifers, and the OASIS modeling system versus the CHEOPS modeling system.

Mr. Vernon Cox, Environmental Programs Specialist, Department of Agriculture and Consumer Services, provided a report on the 2011 Agriculture Water Use Survey. Mr. Cox discussed agricultural average daily withdrawals, historical comparisons, ground water withdrawals, and surface water withdrawals.

There was Commission discussion on aquaculture and hydroelectric withdrawals and the percentage of agriculture water usage. Mr. Cox said that agriculture water usage in North Carolina is about 1% of total water consumption in the State.

Ms. Robin Smith, Assistant Secretary for Environment, DENR and Mr. Tracy Davis, Director of the Division of Energy, Mineral and Land Resources, DENR, presented on the State Erosion and Sedimentation Control Program, including permitting, express permitting, inspections, and enforcement.

Mr. Davis explained how the local sedimentation programs are delegated by the State and noted that DENR still monitors the local programs. If the local sedimentation program is not performing it could be placed on probation and if problems persist, DENR will take the program back.

There was Commission discussion on engineering reviews and why erosion control plans sealed by a licensed engineer were not adequate. Mr. Davis indicated that DENR typically reviews plans within 20 days. A Commission member asked why the mountain counties and jurisdictions have a higher percentage of delegated programs? Some Commission members were concerned about the State program's solvency, express permits, and DENR's responsiveness. One member remarked that the sedimentation program's funding has been cut by the Legislature, so there are fewer people on staff to inspect the sites.

Mr. Scott Mouw, Chief of the Community and Business Assistance Section, Division of Environmental Assistance and Outreach, DENR, presented an update on the degradable plastics study. Mr. Mouw also discussed basic kinds of plastics, products made from plastic feedstocks, recovery of plastic bottles, and recycled plastic markets.

Mr. Mouw explained the difference between high-density polyethylene (HDPE) and polyethylene terephthalate (PET) plastic bottles. Commission members asked if there was an increase in jobs in the plastic industry? Mr. Mouw said that North Carolina has had major investments in plastic bottle reclamation. According to Mr. Mouw, plastics recycling has doubled in the past five to six years.

Mr. Scott Booth, Chief Operating Officer of Envision Plastics, spoke about Envision Plastics history, HDPE recycling, recycling process cycle, environmental impacts, and the customers and companies that use Envision Plastics' products. Mr. Booth discussed certain types of agricultural products and plastics with contaminants, such as motor oil, battery acid, and antifreeze. Mr. Booth said that Envision Plastics has a wastewater treatment plant, which aids in the recyclability of those products. Mr. Booth noted that Envision Plastics does not typically recycle hazardous chemical containers. Mr. Booth also discussed the separation of plastics by color, degradable plastics, and bioresins.

Mr. Chris Bradley, Vice President of Operations, Clear Path Recycling, LLC, spoke about Clear Path Recycling's history, impacts on the State recycling market, markets served, degradable additives and impacts, and threats to PET recycling. According to Mr. Bradley, 80% of the landfill impact is eliminated by the reclamation of PET bottles and byproducts. Mr. Bradley explained that the tolerance level of degradable plastics in the recycling waste stream is unknown. Mr. Bradley further explained recycling feedstocks.

Mr. Terry Turner, Product Development Manager, Unifi, Inc., spoke about Unifi's history, the synthetic yarn the company produces, the manufacturing process, and the product's uses, which include fabrics and clothing.

Dr. Charles J. Lancelot Executive Director of Plastics Environmental Council, discussed the biodegradability of conventional plastics in landfills, degradable plastics in the recycle stream, and bioplastics versus conventional plastics. Dr. Lancelot explained that most plastics are permanent if no degradable additives are included.

November 15, 2012

AGENDA

9:30 a.m. Thursday

Room 544 Legislative Office Building
Raleigh, North Carolina

1. Call to order
Representative Mitch Gillespie, Presiding
2. Introductory remarks by Cochairs (*5 minutes*)
Senator David Rouzer
Representative Mitch Gillespie
Representative Ruth Samuelson
3. Report from the Commission Counsel (*5 minutes*)
Jeff Hudson, Commission Counsel
4. Presentation on development and prioritization of the State's list of impaired waters, pursuant to Section 303(d) of the federal Clean Water Act (*30 minutes*)
Chuck Wakild, Director
Division of Water Quality, Department of Environment and Natural Resources (DENR)
5. Presentation on ecological flow determinations for development of hydrologic models (*1 hour*)
Thomas A. Reeder, Director
Division of Water Resources, DENR
6. Presentation on potential mining for uranium in Virginia and possible impacts and issues for North Carolina (*30 minutes*)
Thomas A. Reeder, Director
Division of Water Resources, DENR
7. Presentation on L&S Hydro v Piedmont Triad Regional Water Authority litigation (*45 minutes*)
Richard B. Whisnant, Associate Professor of Public Law and Government
School of Government, University of North Carolina at Chapel Hill
8. Annual report on the Inactive Hazardous Sites Program (G.S. 130A-310.10) (*1 hour*)

Dexter Matthews, Director
DWM, DENR

9. Commission discussion and announcements
10. Adjourn

The second meeting of the Environmental Review Commission (ERC or Commission) was held on Thursday November 15, 2012 at 9:30 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

Mr. Chuck Wakild, Director of the Division of Water Quality (DWQ) in the Department of Environment and Natural Resources (DENR), provided the Commission with a presentation on the development and prioritization of the State's list of impaired waters pursuant to Section 303(d) of the federal Clean Water Act. Mr. Wakild described that the Environmental Management Commission (EMC) is statutorily authorized to implement the federal Clean Water Act, and specifically authorized to identify and prioritize impaired waters and developing total maximum daily loads (TMDLs) for impaired waters. The "303(d) list" includes those waters that are identified by the State that do not meet any water quality standard. The 303(d) list is prepared and sent to the U.S. Environmental Protection Agency (USEPA) for approval by April 1 in even-numbered years. Under the Clean Water Act, states adopt standards for in-stream water quality and the 303(d) listing process is conducted to determine if water bodies meet water quality standards. The 303(d) list is used for basin plans, targeting DWQ and other entities for technical and financial assistance, informing permitting, and developing TMDLs as required by federal law. The EMC adopted a new 303(d) assessment methodology at the November 8, 2012 meeting that involves public review and comment, Water Quality Committee (of the EMC) approval, and EMC approval.

Mr. Tom Reeder, Director of the Division of Water Resources (DWR) in DENR, provided the Commission with a presentation on ecological flow determinations for development of hydrologic models. Mr. Reeder described ecological flows as the site-specific flow needed to remain in a water body in order to maintain instream uses. Mr. Reeder explained the difference between ecological flow and minimum flows which are defined as the minimum threshold to maintain aquatic life for short periods of time. Mr. Reeder updated the Commission with DENR's activities including those required by S.L. 2010-143 to identify the flow necessary to maintain ecological integrity, the creation of a Science Advisory Board to assist in characterizing and determining ecological flows, incorporating ecological flows into hydrologic river basin models, and determining if ecological flows will be adversely impacted by existing or future water withdrawals. DENR views ecological flows as a planning rather than policy tool. Mr. Reeder identified utilities, public water supply, industry, agriculture, and mining as the withdrawals with the greatest potential to impact ecological flow. Public water supply systems on run-of-the-river systems have the greatest potential to impact ecological flow. Mr. Reeder discussed potential positive impacts of ecological flows and promotion of water security.

Mr. Tom Reeder, Director of DWR in DENR, provided the Commission with a presentation on the potential for uranium mining in Virginia and the possible impacts and issues for North Carolina. Mr. Reeder identified the location of the proposed mining site in Coles Hill, Virginia and its location proximate to Kerr Lake in the Roanoke River Basin. Mr. Reeder briefly explained the process of uranium mining and milling and how the proposed process may produce 11 million cubic yards of radioactive tailings stored in aboveground impoundments of up to 40 acres in size. Mr. Reeder listed potential physical impacts to North Carolina from tailing containment failure to include: radioactive tailings washing downstream; increased radiation levels more than 10 to 20 times the Safe Drinking Water Act levels in Kerr Lake; the possibility of taking more than two years to flush contamination; and the potential for re-suspension of particulate contamination during periods of high flow. Presently, the uranium mining ban in Virginia remains in place, the study ordered by Governor McDonnell is being finalized, and the Virginia Legislature may consider lifting the mining ban during the 2013 legislative session. To date, North Carolina has handled the situation through the Roanoke River Bi-State Commission which adopted a resolution opposed to mining in August 2012 that was sent to the legislatures and governors of both Virginia and North Carolina.

Mr. Richard Whisnant, Associate Professor of Public Law and Government at the School of Government at the University of North Carolina at Chapel Hill, presented the Commission with an overview of the *L&S Hydro v Piedmont Triad Regional Water Authority* litigation. Mr. Whisnant listed some significant water law issues at stake in the trial including the nature of riparian water rights and how they stack up against nonriparian users, such as public water supply and the difference between the law of beneficial use of water in streams and lakes versus the law of liability for damages for water flowing across land. Mr. Whisnant also noted the concern about contingent liability of all other entities with eminent domain powers who have responsibility for water withdrawals that may reduce flows to downstream riparian owners, specifically are there temporal or spatial limits to the injuries? Mr. Whisnant also discussed some of the implications of this litigation on efforts to improve water security in North Carolina and recommended the legislature adopt clearly stated policy goals to help guide administrative and judicial decisions and to regulate large withdrawals or uses.

Mr. Dexter Matthews, Director of the Division of Waste Management in DENR presented the Commission with the annual report of the Inactive Hazardous Sites Program and the Bernard Allen Memorial Drinking Water Fund. Mr. Matthews described the Inactive Hazardous Sites Program, the types of sites that are included in the Program, and an overview of the current inventory of sites contaminated with hazardous substances for the 2011-2012 fiscal year. Mr. Matthews stated that sites are designated as "high-risk" when there are exposure concerns including contaminated drinking water supplies, direct contact with contaminated soils on residential properties, and vapors from contaminated groundwater entering homes or other buildings. Mr. Matthews described orphan sites and the inherent difficulty with determining responsible parties. Mr. Matthews identified sources of funding for orphaned sites, discussed pre-regulatory

landfills, and use of the Bernard Allen Memorial Drinking Water Fund and the Inactive Hazardous Sites Cleanup Fund. Lastly, Mr. Matthews provided the Commission with history and an update on the Stony Hill Road private well contamination and made numerous recommendations.

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LEGISLATIVE PROPOSALS

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